

## **APPENDIX C**

### **AGREEMENT (DRAFT)**

DRAFT

AGREEMENT FOR THE OPERATION  
OF THE  
SUNNYVALE MATERIALS RECOVERY AND  
TRANSFER STATION  
BETWEEN  
THE CITY OF SUNNYVALE  
AND

---

February 2007

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS .....	3
ARTICLE 2. TERM OF AGREEMENT.....	4
2.01 Effective Date .....	4
2.02 Term.....	4
2.03 Option to Extend Term .....	4
2.04 Conditions to Effectiveness of Agreement.....	4
ARTICLE 3. OPERATION OF TRANSFER STATION .....	6
3.01 Receipt of Municipal Solid Waste and Recyclable Materials.....	6
3.02 Priority .....	6
3.03 Days and Hours of Operation .....	7
3.04 Receipt and Processing of Material from Extended Service Area.....	7
3.05 Material Recovery Operations .....	8
3.06 Permits .....	12
3.07 Mitigation Measures .....	13
3.08 Hazardous Waste.....	13
3.09 Equipment.....	14
3.10 Personnel.....	15
3.11 Other Operating Procedures and Standards .....	17
3.12 Turnaround Time of Waste Collection Vehicles .....	17
3.13 Weighing.....	18
3.14 Collection of Public Use Fees .....	18
3.15 Cooperation Regarding Clean Up Campaign and Special Events .....	18
3.16 Marketing of Recyclable Materials.....	19
3.17 City's Right to Cure Defaults .....	22
3.18 City Use of Offices/Visitor Center .....	22
3.19 Source-Separated Recyclables Composition Survey .....	23
3.20 Cost Allocation Reports.....	23
3.21 Modifications to MSW Processing Line .....	23
ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET .....	24
4.01 Transportation.....	24
4.02 Parking and Maintenance of Transfer Vehicles .....	25

ARTICLE 5.	COMPENSATION TO CONTRACTOR.....	26
5.01	General.....	26
5.02	Basic Annual Payment.....	26
5.03	Tipping Fee for Excess Tonnage.....	27
5.04	Gate Fees for Publicly Hauled Waste.....	28
5.05	Reimbursement of Certain Costs .....	28
5.06	Contractor's Share of Recycling Revenues.....	29
ARTICLE 6.	PAYMENT AND REVENUE SHARING PROCEDURES.....	30
6.01	Basic Annual Payment.....	30
6.02	Tipping Fee for Excess Tonnage.....	30
6.03	Publicly Hauled Waste .....	30
6.04	Cost Reimbursements.....	30
6.05	Revenues Received from Sale of Recyclable Materials .....	30
6.06	Host Fee; Payment Procedure .....	33
ARTICLE 7.	INDEMNITY, INSURANCE, BOND .....	34
7.01	Indemnification.....	34
7.02	Insurance .....	34
7.03	Faithful Performance Bond .....	40
7.04	Alternative Security .....	40
7.05	Hazardous Waste Indemnification.....	40
7.06	Integrated Waste Management Act Indemnification .....	41
ARTICLE 8.	REPRESENTATIONS AND WARRANTIES OF CONTRACTOR.....	42
8.01	Corporate Status .....	42
8.02	Corporate Authorization .....	42
8.03	Statements and Information in Proposal.....	42
8.04	No Conflict with Applicable Law or Other Documents.....	42
8.05	No Litigation .....	42
8.06	Financial Condition .....	43
8.07	Expertise .....	43
ARTICLE 9.	DEFAULT AND REMEDIES.....	44
9.01	Events of Default .....	44
9.02	Right to Suspend or Terminate Upon Default .....	45
9.03	Specific Performance .....	46
9.04	Right to Perform .....	46

9.05	City's Remedies Cumulative.....	46
9.06	Liquidated Damages .....	47
9.07	City Default .....	48
9.08	City's Right to Cure .....	49
9.09	Use of Property Upon Default.....	49
9.10	Damages.....	50
ARTICLE 10.	OTHER AGREEMENTS OF THE PARTIES.....	51
10.01	Relationship of Parties .....	51
10.02	Compliance with Law.....	51
10.03	Governing Law.....	51
10.04	Jurisdiction .....	51
10.05	Assignment.....	51
10.06	Subcontracting .....	53
10.07	Binding on Successors.....	53
10.08	Parties in Interest .....	53
10.09	Waiver .....	54
10.10	Contractor's Investigation; No Warranties by City.....	54
10.11	Condemnation .....	54
10.12	Notice .....	55
10.13	Representatives of the Parties .....	55
10.14	Duty of Contractor Not to Discriminate.....	56
10.15	City Environmental Policies .....	56
10.16	Right to Enter and Inspect Station.....	56
10.17	Recycling Programs Not Restricted.....	56
10.18	Maintenance and Review of Records, Submission of Reports .....	57
10.19	Right to Demand Assurances of Performance.....	57
10.20	Right of City to Make Changes .....	58
10.21	Force Majeure.....	59
10.22	Cooperation During Transition .....	60
10.23	Guaranty .....	60
10.24	Reports as Public Records .....	60
ARTICLE 11.	MISCELLANEOUS AGREEMENTS .....	61
11.01	Exhibits .....	61
11.02	Entire Agreement.....	61

11.03 Section Headings .....	61
11.04 Interpretation .....	61
11.05 Amendment.....	61
11.06 Severability.....	61
11.07 Attorneys' Fees .....	61
11.08 References to Laws .....	61

## **LIST OF EXHIBITS**

Exhibit A	Definitions
Exhibit B-1	Materials Recovery Operations Plan
Exhibit B-2	Materials Flow Diagram
Exhibit B-3	Food Waste Processing Plan and Pricing
Exhibit C	(?)
Exhibit D	Permits Necessary for Operation of Station
Exhibit E	Terms and Conditions in Use Permit Issued by City for Station
Exhibit F	Adopted Mitigation Measures in FEIR
Exhibit G	Hazardous Waste Exclusion Program
Exhibit H-1	Equipment to be Furnished by City
Exhibit H-2	Equipment to be Furnished by Contractor
Exhibit I-1	Minimum Staff Complement for Station
Exhibit I-2	Prevailing Wage Determination Letter
Exhibit I-3	Benefit Monetization Procedure
Exhibit J	Operating Procedures and Standards
Exhibit K	(?)
Exhibit L	(?)
Exhibit M	Volume-to-Weight Conversion Factors
Exhibit N-1	(?)
Exhibit N-2	(?)
Exhibit O-1 - 11	Reporting Forms
Exhibit O-12	Minimum Software Capabilities
Exhibit P	Allocation of Revenues from Sale of Recycled Materials
Exhibit Q	Form of Performance Bond
Exhibit Q-1	Form of Continuation Certificate
Exhibit R	Procedures for Arbitration
Exhibit S	Method for Calculating Recycling Percentage
Exhibit T	(?)
Exhibit U	Plan of Office Building
Exhibit V-1	Environmental Procurement Policy
Exhibit V-2	Integrated Pest Control Policy
Exhibit W	Guaranty
Exhibit X	(?)

**AGREEMENT FOR THE OPERATION  
OF THE  
SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION**

THIS AGREEMENT is made as of this \_\_\_\_\_ day of February, 2007,  
by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter  
referred to as the "City") and \_\_\_\_\_, a  
\_\_\_\_\_ (hereinafter referred to as "Contractor").

**RECITALS**

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the California Integrated Waste Management Act of 1989, now codified at Public Resources Code Section 40000, *et seq.* (hereinafter referred to as the "Act"), directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal.

2. The City concurs in the aforementioned findings and declarations of the State of California.

3. City entered into an agreement with Waste Management of California, Inc., dated as of September 10, 1991 for long term disposal of solid waste (hereinafter referred to as "Disposal Contract"). The City of Mountain View and the City of Palo Alto (hereinafter collectively referred to as the "Neighboring Cities") also entered into companion agreements with Waste Management of California, Inc. (hereinafter referred to as the "Neighboring Cities' Disposal Contracts"). The Disposal Contract and the Neighboring Cities' Disposal Contracts all contemplate the initial delivery of Municipal Solid Waste from the City and the Neighboring Cities to a materials recovery and transfer station (hereinafter referred to as "Station") for processing, with only the residue which is not recycled then to be compacted and thereafter transported to and



disposed of at the Kirby Canyon Sanitary Landfill in San Jose, which is operated by Waste Management of California, Inc. The recycling operations conducted at the Station, which was constructed by the City, are integral and important components of the City's and the Neighboring Cities' strategies for implementing the Act and are incorporated into each city's Source Reduction and Recycling Element which, in turn, have been incorporated into the Santa Clara County Integrated Waste Management Plan.

4. Acting on its own behalf, and on behalf of the Neighboring Cities, City issued on \_\_\_\_\_, 2006, a Request for Proposals (hereinafter referred to as "RFP") seeking proposals from qualified firms to operate the Station and to receive and process Municipal Solid Waste and Recyclable Materials from the City and Neighboring Cities (which three (3) cities are hereinafter sometimes collectively referred to as the "Participating Agencies"). City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide operation of the Station (which entails processing materials for reuse and recycling, the marketing of such materials and the transport of nonrecycled waste materials for disposal) in a manner and on terms which are in the best interests of the Participating Agencies and their residents, taking into account the qualifications and experience of Contractor, the level of recycling to which the Contractor is committed, and the cost of providing such services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows:

## **ARTICLE 1. DEFINITIONS**

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference.

## **ARTICLE 2. TERM OF AGREEMENT**

**2.01     Effective Date.** The effective date of this Agreement shall be \_\_\_\_\_, 2007 ("Effective Date").

**2.02     Term.** The Term of the Agreement shall commence on the Effective Date and shall end at midnight on December 31, 2014, unless extended as provided in Section 2.03. Contractor's obligation to operate the Station shall commence January 1, 2008.

**2.03     Option to Extend Term.** The City may extend the Term of this Agreement for one (1) or more periods of three (3) months, up to a maximum of one (1) year, on the same terms and conditions. If City wishes to extend the Term it shall deliver a written notice to Contractor at least six (6) months before the expiration of the Term (i.e. on or before June 30, 2014) specifying the number of additional months by which it wishes to extend the Term. If the City initially elects to extend the term for less than twelve (12) months, it may subsequently elect to further extend the term in increments of three (3) months, up to a total of twelve (12) months, i.e. until December 31, 2015. If the City wishes to further extend the term in this fashion it shall deliver a written notice to contractor at least thirty (30) days prior to the expiration of the extended term.

**2.04     Conditions to Effectiveness of Agreement.** The obligation of the City to perform under this Agreement is subject to satisfaction, on or before the Effective Date, of each and every one (1) of the conditions set out below, which may be waived in whole or in part by City:

**A.     Accuracy of Representations.** The representations and warranties made by Contractor in Article 8 of this Agreement shall be true and correct on and as of the Effective Date, and a certification to that effect dated as of the Effective Date shall be delivered by Contractor to City on the Effective Date.

**B.     Absence of Litigation.** There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishing of Bond.** Contractor has furnished the Performance Bond required by Section 7.03.

D. **Furnishing of Guaranty.** Contractor has furnished the Guaranty required by Section 10.23.

E. **Effectiveness of City's Approval.** The City's approval of this Agreement shall have become effective, pursuant to California law, on or before the Effective Date.

In the event that any condition set forth in this Section 2.04 is not satisfied or waived, by the Effective Date, by the City, this Agreement shall be void and shall have no further force or effect. City may waive the satisfaction of conditions described in Section 2.04, allow this Agreement to become effective, and exercise its rights and remedies under this Agreement for Contractor's failure to deliver the bond. Each party is obligated to perform in good faith the actions, if any, which this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

### **ARTICLE 3. OPERATION OF TRANSFER STATION**

#### **3.01 Receipt of Municipal Solid Waste and Recyclable Materials.**

Commencing on January 1, 2008 and continuing throughout the Term, Contractor shall receive and accept (1) all Municipal Solid Waste and Source-Separated Recyclable Materials delivered to the Station by or on behalf of City, the other Participating Agencies and its or their Designated Haulers; (2) Publicly Hauled Waste generated within the City or within the jurisdiction of the other Participating Agencies; and (3) Source-Separated Recyclable Materials delivered by residents of or businesses operating within the City or within the other Participating Agencies.

Contractor shall process such materials for either Recycling or Disposal in accordance with this Agreement.

**3.02 Priority.** The basic and primary purpose of the Station is to process Municipal Solid Waste and Recyclable Materials delivered by the Participating Agencies and their respective Designated Haulers, who shall have first priority in use of the Station. A secondary purpose is to process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of the Station. If City allows, pursuant to Section 3.04, Municipal Solid Waste or Recyclable Materials generated outside the Participating Agencies to be delivered to and accepted for processing at the Station, such material shall be assigned third priority and Contractor shall operate the Station in order to give effect to the above stated priorities.

Processing of material from outside the Participating Agencies shall, if allowed, never be permitted to interfere with processing of Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, City may direct that materials from outside the Participating Agencies not be accepted during peak hours (10 a.m. to 2 p.m.) or when vehicles of Designated Haulers from any of the Participating Agencies are delayed entry beyond the times allowed in Section 3.12. Vehicles carrying materials from outside the Participating Agencies shall be refused entry during such periods.

**3.03      Days and Hours of Operation.** Contractor shall operate the Station, as specified in this Section, every day of the year except January 1, the fourth (4th) Thursday of November, and December 25 ("the holidays").

Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, the other Participating Agencies and their respective Designated Haulers at least twelve (12) hours per day, Monday through Friday and on Saturdays which occur in weeks containing a holiday which falls on a weekday. These minimum hours of full-scale operations shall be 5 a.m. to 5 p.m. On all other Saturdays the Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, other Participating Agencies and their respective Designated Haulers between the hours of 8 a.m. and 3 p.m.

Contractor shall operate the Station for the receipt and processing of Publicly Hauled Waste, and shall operate the buyback/drop-off center, from 8 a.m. to 5 p.m. every day, including Saturday and Sunday, except for the three (3) holidays. With forty-eight (48) hours' prior notice, Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from the City between 8 a.m. and 5 p.m. on Saturday and/or Sunday.

Contractor may operate the Station for processing of Municipal Solid Waste and Recyclable Materials and for delivery of Municipal Solid Waste to the Disposal Facility and of Recyclable Materials to market beyond the hours set forth above, provided that it complies with the limits on operation of equipment specified in the Conditional Use Permit (Exhibit E), including:

- trucks delivering refuse:                      5 a.m. - 5 p.m.
- wood chipping equipment:                      8 a.m. - 5 p.m.
- compactors:    7 a.m. - 10 p.m.

**3.04      Receipt and Processing of Material from Extended Service Area.**  
City may at any time, and from time to time, require Contractor to receive and process Municipal Solid Waste and/or Recyclable Materials which originate in the Extended

Service Area. Unless and until City does so, Contractor shall not receive any Municipal Solid Waste or Recyclable Material from outside the Primary Service Area.

City has no obligation to Contractor to allow materials from outside the Primary Service Area to be delivered to the Station.

[If City directs Contractor to receive and process Municipal Solid Waste from the Extended Service Area, either party may request that a waste characterization study of the Municipal Solid Waste from this area be conducted in accordance with the procedure described in \_\_\_\_\_, and City will arrange for such study to be conducted, with the expenses thereof paid equally by City and Contractor.

Promptly upon completion of the study, the parties will meet to consider: (1) whether the study shows a significant difference in composition of the Municipal Solid Waste from the Extended Service Area, as compared to that from within the Primary Service Area, and (2) if so, whether and to what extent there should be a change in the Minimum Recycling Level. If the parties are unable to agree on an appropriate change in the Minimum Recycling Level, the dispute may be submitted to binding arbitration pursuant to the procedures set out in Exhibit \_\_\_\_.]

### **3.05      Material Recovery Operations.**

**A.      General.** Contractor recognizes that City and the other Participating Agencies are committed to recycling waste materials which have in the past been disposed of in landfills. To that end, the Station has been designed and shall be operated to accomplish materials recovery in four (4) distinct operations which are summarized below in Subsections B, C, D, and E, described in Exhibit B-1, and illustrated in the material flow diagram attached as Exhibit B-2.

#### **B.      Processing of Municipal Solid Waste; Minimum Recycling Level**

1.      Municipal Solid Waste delivered by the Participating Agencies and their Designated Haulers, and Publicly Hauled Waste, shall be sorted to recover materials for Recycling including paper and other fibers, metals, wood, glass and plastic. Contractor shall Recycle not less than seventeen and one-half percent (17.5%) by weight of Municipal Solid Waste (including Publicly Hauled Waste)

delivered to the Station, which percentage is hereinafter referred to as the "Minimum Recycling Level." In addition, Contractor shall use all reasonable efforts to Recycle the maximum economically feasible amount. Contractor's performance in achieving the Minimum Recycling Level will be measured on a fiscal year basis. The Recycling Level achieved by Contractor will be calculated as shown on Exhibit \_\_\_\_.

If Contractor fails to achieve the Minimum Recycling Level in any fiscal year, it shall pay City the sum obtained by multiplying the Disposal Fee per Ton in effect during such fiscal year by the difference, in Tons, between the number of Tons which, if Recycled, would have achieved the Minimum Recycling Level and the number of Tons actually Recycled.

The foregoing amounts shall be paid to City within thirty (30) days after the Recycling Level for the fiscal year has been calculated by City pursuant to Exhibit S. If not so paid, City may deduct the amount due from future payments to Contractor. Payment of the foregoing amounts does not cure the breach of contract represented by failure to achieve the Minimum Recycling Level and City retains its rights under Article 9.

**C. Processing of Source-Separated Recyclable Materials.** City and the other Participating Agencies operate various recycling programs including "curbside" recycling. Materials collected through these programs currently include glass, metal cans, scrap metals, plastic containers, corrugated cardboard, mixed paper, newsprint, residential used motor oil, and used oil filters. The Participating Agencies may change from time to time the type of materials collected.

Contractor shall process all Source Separated Recyclable Materials collected by City, by other Participating Agencies, by their respective Designated Haulers or by other persons under contract, which are delivered to the Station for marketing in accordance with Section 3.16. Recycling of these materials does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall be responsible for handling, storage and marketing of used motor oil. Contractor shall drain oil containers used by the Participating Agencies' curbside collection programs of all free-flowing residue and shall make



reusable emptied containers available to the operators of the curbside collection programs for reuse.

If City initiates collection of Source-Separated Food Waste, Contractor will process such materials for composting in the manner and for the price described in Exhibit B-3.

**D. Processing of Source-Separated Yard Trimmings.** Yard Trimmings are collected separately from residential customers by the City and the City of Mountain View. So long as either city continues to collect Yard Trimmings separately, they will continue to be delivered to the Station pursuant to Section 10.17.

Contractor will direct vehicles delivering Source-Separated Yard Trimmings to a specific processing area for removal of contaminants (such as large metal objects, dirt and rock), shredding, magnetic removal of small pieces of ferrous metal and separate bulk storage. Yard Trimmings and untreated wood (but not construction and demolition debris) removed from mixed loads through sorting on the MSW tipping floor will also be processed in the same manner.

Source-Separated Yard Trimmings may not be disposed of at a landfill nor may they be used for alternative daily cover or for any other "beneficial use" at a landfill without City's prior written approval. Source-Separated Yard Trimmings may be (1) composted at a permitted compost facility identified in Contractor's proposal or subsequently approved by City, and (2) with the City's prior written approval, used as fuel in a conventional biomass electrical generating facility.

Source Separated Yard Trimmings are included in the 280,000 Tons processing of which is covered by the Base Annual Payment provided in Section 5.02.B.

Composting, Transformation or Recycling of Source-Separated Yard Trimmings does not count toward Contractor's achievement of the Minimum Recycling Level.

City has no obligation to approve use of Source-Separated Yard Trimmings either as alternative daily cover or as fuel for a biomass facility.

*[Residue from compost to Kirby?]*

**E. Buyback/Dropoff Center.** Contractor shall establish and operate a buyback/dropoff center within the Station. The purpose of the Buyback/Dropoff Center is to receive Source-Separated Recyclable Materials that are delivered to the Station by members of the public to process and then to market such materials.

The following materials will be accepted at the dropoff center:

- Newspaper
- Glass bottles, jars and other beverage containers
- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed paper
- Plastics (HDPE, PET)
- Used motor oil from residential users
- Used automobile oil filters
- Anti-freeze
- Automobile batteries
- Household batteries
- Florescent light bulbs and tubes
- Household items containing mercury (e.g., thermometers, thermostats)
- All containers for which a California Redemption Value ("CRV") is established now or during the Term. (?)
- As directed by City, other materials that are accepted at other facilities similar to the Station located in Alameda, San Mateo and Santa Clara Counties.

Contractor shall establish prices to be paid for materials accepted at the Buyback/Dropoff Center and shall maintain complete and accurate records of purchase transactions. Such prices shall be within ten percent (10%), plus or minus, of the average prices paid for similar materials purchased in retail quantities from individual customers in similar facilities in Alameda, San Mateo and Santa Clara

counties. These average prices will be established by a survey of these facilities conducted once a year by Contractor in July, with the results provided in a written report to City on or before July 31 of each year commencing July 2008.

City shall reimburse Contractor for a portion of the prices paid to users of the Buyback/Dropoff Center, the percentage to be equivalent to the City's percentage share of revenues from Recycled Materials sales, determined in accordance with Section 6.05 and Exhibit \_\_\_\_\_. The reimbursement shall be effected by a credit against the amount due City from Contractor under Section 6.05.

Contractor shall provide, in the vicinity of the Buybuy/Dropoff Center, a separate bin in which members of the public may deposit, without charge, Sharps. The bin shall be designed with a chute, such that materials deposited in the chute cannot thereafter be removed. Contractor shall arrange for disposal of Sharps at an appropriately permitted facility and shall inform City of the name and location of the facility to be used. City shall reimburse Contractor for the cost of proper disposal of Sharps.

Recycling of materials accepted at the Buybuy/Dropoff Center does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall install and maintain signage at the Station giving members of the public appropriate information about the location and operation of the Buyback/Dropoff Center. The text of the signage shall be approved by City prior to its being installed.

**3.06      Permits.** City will obtain renewals of all operating permits and approvals from governmental agencies listed on Exhibit D.

If new operating permits and approvals (or amendments to the permits and approvals obtained by City) become necessary during the Term, by virtue of Contractor's operations, it will be the responsibility of Contractor to obtain them. City will assist the Contractor in obtaining them provided that the operations which give rise to the need for them are in compliance with this Agreement. Contractor shall submit a draft of all applications for operating permits (and for subsequent renewals or modifications thereof) to the City for its review and approval prior to filing an

application with the permitting agency. Contractor shall keep the City fully informed at all times on the status of all permit applications, including meetings with agency staff and hearings on permit applications before the agency's governing board.

Contractor shall apply for permits in its own name or in the name of the City, as directed by the City. Contractor shall not agree to permit terms and conditions on any permit which is to be issued in the name of the City without the prior written consent of the City. Copies of all permits issued in Contractor's name and originals of all permits issued in the City's name (and any renewals or amendments) shall be delivered to the City promptly, and in any case within five (5) working-days of their receipt by Contractor.

Contractor shall keep all licenses, permits and approvals governing the Station in force and shall comply with their terms, including any which may require improvements or modifications in operating procedures. Without limiting the generality of the foregoing, Contractor will comply with the terms and conditions contained in the Use Permit issued by the City for the Station, a copy of which is attached as Exhibit E.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit terms or its failure to obtain necessary permits.

**3.07 Mitigation Measures.** Contractor shall comply with and perform all of the mitigation measures identified in the FEIR which relate to the operation and maintenance by Contractor of the Station and transportation by Contractor of Municipal Solid Waste to the Disposal Facility, which were adopted by the City Council when the FEIR was certified and which are listed on Exhibit F.

**3.08 Hazardous Waste.** Contractor shall, upon commencement of operations at the Station, implement a Hazardous Waste Exclusion Program ("HWEP"), the minimum requirements for which are set out in Exhibit G, in a diligent, reasonable and non-discriminatory manner. If the California Integrated Waste Management Board or the California EPA require additional measures to be incorporated into the HWEP, Contractor shall comply with such additional measures. Contractor shall temporarily store materials discovered through the HWEP (or otherwise) that cannot

be processed at the Station or accepted at the Disposal Facility in the appropriate storage areas provided at the Station for this purpose. Contractor shall arrange and pay for the safe and lawful disposal of such waste, subject to reimbursement as provided in Section 5.05.

The operator of the Disposal Facility is required to conduct its own independent HWEF which will entail checking of loads delivered from the Station by Contractor. If the operator of the Disposal Facility rejects material delivered to the Disposal Facility under Section 3.06 of the Disposal Contract, Contractor shall remove and dispose of it in a safe and lawful manner, at its sole expense. Contractor shall also be solely responsible for reimbursing the Disposal Facility operator for costs of testing and disposal of waste which the Disposal Facility operator initially accepts but subsequently discovers may not be legally disposed of at the Disposal Facility, to the extent that such reimbursement is required by Section 3.06 of the Disposal Contract. To the extent Contractor must pay the Disposal Facility for the costs of disposing of such hazardous material due to the failure of transporters of Municipal Solid Waste to eliminate such materials prior to their delivery to the Station, Contractor shall be entitled to pursue whatever remedies, if any, it may have against such transporters, but shall not be entitled to reimbursement from City or the Participating Agencies.

Contractor shall remove and arrange for proper disposal of CFCs and compressor oils from appliances delivered to the Station, as well as switches containing mercury.

**3.09      Equipment.** City will provide the equipment listed on Exhibit H-1. Contractor shall provide all other equipment, sufficient in number and capacity to perform safely and efficiently the work required by this Agreement including but not limited to the equipment listed on Exhibit H-2. All equipment furnished by Contractor shall be new and unused as of January 2008, and suitable in design and construction for arduous, heavy-duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

The number of Transfer Vehicles and other equipment shown on Exhibit H-2 is based on throughput of Municipal Solid Waste at the level anticipated at the commencement of the Term. The parties recognize that volume may increase over

time and that additional Transfer Vehicles and/or other equipment would be needed if and when it does. Contractor will acquire and operate such additional Transfer Vehicles and/or other equipment as needed to receive, process and transfer up to 1500 Tons per day, while continuing to meet performance standards required by this Agreement, and there shall be no increase in the Contractor's compensation provided in Article 5 as a result. All Transfer Vehicles must be capable of being loaded from either top or rear.

The City shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall, prior to February 1, 2008, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall record, or allow the City to record, such Statements and other documentation. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor.

Upon the City's exercise of its option to purchase, Contractor will sign and deliver bills of sale or other documents reasonably requested by City to evidence the transfer of title to all equipment purchased.

If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish, it shall request City's permission to do so and provide to City, for its approval, complete and accurate copies of all equipment leases which it proposes to enter into. The leases must provide that the lessor will, if requested, consent to their assignment to City without charge upon the expiration or earlier termination of this Agreement and must provide adequate mechanisms for the City to acquire title to equipment if desired.

**3.10 Personnel.** Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Station and the transfer of Municipal

Solid Waste to the Disposal Facility and Recyclable Materials to market) in a safe and efficient manner. The minimum complement of personnel staffing the Station shall be as shown on Exhibit I-1. Exhibit I-1 shows the personnel complement at an average throughput of Municipal Solid Waste anticipated at the commencement of the Term. The parties recognize that throughput rates may increase over time and that this increased volume could require additional personnel. The Contractor will add personnel as needed to operate the Station and achieve the Minimum Recycling Level, without any increase in the Contractor's compensation provided for in Article 5, provided that the annual volume of MSW and yard trimmings is not in excess of 280,000 tons.

Contractor shall pay its drivers, sorters, mechanics and other employees working directly under this Agreement, and based at the Transfer Station, wages and benefits no less than the general prevailing rate of wages applicable to the work to be done, as determined by the Director of the California Department of Industrial Relations in a letter dated February 28, 2006, attached as Exhibit I-2. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the "total hourly rate" determined to be the prevailing wage, as shown on Exhibit I-2. The method by which benefits such as sick leave, vacation/holiday, and health insurance are monetized is shown on Exhibit I-3.

If the California Department of Industrial Relations issues a subsequent determination that the total hourly rate for any job classification is higher than the total hourly rate then in effect as calculated in subsection B above, then Contractor shall, no later than the first July 1 after the date of issuance of the Department of Industrial Relations determination letter, raise the wages and/or benefits of the employees in that job classification by 3% plus the same percentage as the Basic Annual Payment is increased pursuant to Section 5.02.B. or the amount required to bring the hourly rate to the new prevailing wage, whichever is less. If the hourly rate remains below the rate in the determination, on each subsequent July 1 Contractor will provide another increase in wages and/or benefits, until the hourly rate is at least at the level of the prevailing wage in the determination or until the end of the Term, whichever comes first.

If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor:

- (a) Provides all such workers compensation equal to that which this Section would require Contractor to pay if the workers had been hired as its own employees;
- (b) Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;
- (c) Maintains workers compensation and employer's liability insurance covering such workers in the amount required by Section 7.02.A.1 and with policies meeting the other requirements of Section 7.02.A.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work which Contractor is required to perform and the standards it is required to meet, under this Agreement.

If workers provided by a particular independent contractor prove persistently unsatisfactory, City may require that Contractor either secure workers through a different independent contractor or hire qualified and competent employees directly. Contractor shall defend and indemnify City from and against any claim or suit filed by any independent contractor furnishing workers to Contractor.

**3.11 Other Operating Procedures and Standards.** In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of the California Integrated Waste Management Board currently in effect and as they may be changed from time to time, and with the procedures and standards contained in Exhibit J.

**3.12 Turnaround Time of Waste Collection Vehicles.** Contractor shall operate the Station so that:



A. All vehicles of Participating Agencies and their Designated Haulers entering the Station are processed through the scale house weighing operation in no more than ninety (90) seconds per vehicle, measured from the vehicle's entry onto the scale;

B. All vehicles of Participating Agencies and their Designated Haulers are able to unload and depart from the Station in no more than fifteen (15) minutes from their leaving the scale house;

C. All vehicles carrying Publicly Hauled Waste do not wait an unreasonable amount of time at the scale house or for an assigned place to dump.

**3.13 Weighing.** Contractor shall operate and maintain the scale system at the Station. Weighing operations shall be conducted in accordance with standards and procedures set out on Exhibit J. City will provide four (4) scales at the Station with digital instrumentation. Contractor shall furnish all hardware (including computers, cabling and terminals) and software (including memory) and all other items necessary to generate, at a minimum, all the reports contained in Exhibits \_\_\_\_ through O-11. The software shall have the capabilities described in Exhibit \_\_\_\_\_. The Contractor shall be solely responsible for operation of the computers and software.

Contractor shall provide City with licenses and all other documentation necessary or useful for City to operate the computers and software upon expiration or earlier termination of the Agreement.

City may decide to install, at its expense, radiation detection equipment at the Gate House. If so, Contractor will accommodate the work necessary to install the equipment, will arrange for its employees to be trained in its use (training to be provided by City), and will operate the equipment and respond to alerts without additional cost to City.

**3.14 Collection of Public Use Fees.** Contractor shall collect Public Use Fees established by the City from all Persons who use the Station other than the Participating Agencies and their Designated Haulers. Contractor shall keep complete and accurate records of all Public Use Fees collected, shall be responsible for the safekeeping of monies and negotiable instruments collected, and shall remit to the

City (and the other Participating Agencies) all of such Public Use Fees collected, except the Gate Fee, provided in Section 5.04. The City shall have sole and exclusive authority to establish Public Use Fees and to modify them from time to time, provided that they will always be sufficient to generate at least the Gate Fee.

**3.15      Cooperation Regarding Clean Up Campaign and Special Events.**

Contractor shall cooperate with all the Participating Agencies in providing free dumping weekends during Cleanup Campaigns and in use of "free dumping" coupons by residents of the Participating Agencies. Cleanup campaigns shall occur no more than six (6) weekends each year; coupons for free dumping may be valid at any time, however. No more than one (1) Cleanup Campaign will be scheduled on any given weekend. In addition, Contractor shall cooperate with City in other periodic events, including document shredding and neighborhood cleanups. [DESCRIBE]

**3.16      Marketing of Recyclable Materials.**

**A.      Marketing Efforts.** Contractor shall use its best efforts in marketing and promoting the sale of all Recyclable Materials. Contractor shall employ its best marketing strategy in effecting disposition of Recyclable Materials, and shall use its best efforts to obtain the best possible prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials from the Station as it does in marketing materials which it markets for its own account as Principal or as an agent/broker for any third party.

**B.      Marketing Plan.** Contractor shall submit to City on or before January 1, 2008, and annually thereafter on or before January 1 of each following year, a plan for marketing of Recyclable Materials for the forthcoming year. The Marketing Plan shall include the following:

1.      Quantities: estimated quantities of Recyclable Materials in each of the following categories which Contractor expects to process for marketing during the year:

- Newsprint
- Glass bottles and jars

hundred percent (100%) of the per ton cost incurred in their disposition, which are in excess of the disposition cost limit set forth above.

**D. Title and Risk of Loss.** Title to, and risk of loss of, Recyclable Materials shall be with Contractor upon delivery to the Station. Contractor shall keep the Recyclable Materials free from liens and other claims of Contractor's creditors.

**E. Relationship of Parties.** The parties to this Agreement intend and hereby agree that their relationship shall be that of independent contractors with respect to the marketing of Recyclable Materials. Nothing contained herein shall be construed to create any employment, partnership, joint venture, co-ownership or agency relationship between the parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership or agency exists between the parties.

**3.17 City's Right to Cure Defaults.** In the event that Contractor fails to perform any of its obligations under this Article 3, and fails to commence and diligently prosecute such work within three (3) days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

**3.18 City Use of Offices/Visitor Center.**

**A. Offices.** City shall have exclusive use of approximately six hundred seventy-five (675) square feet of the office space, as shown on Exhibit \_\_\_. In addition ten (10) parking spaces will be reserved for the exclusive use of City staff and invitees. Contractor shall provide, at no charge to City, utilities to this portion of the Office/Visitor Center building, including water, sewer, electrical power, heat and light, as well as janitorial and building maintenance services. City will provide, at its

expense, telephones and other communications equipment, furniture, computers, office supplies and moveable partitions.

**B. Other Areas.** City shall have the right to make reasonable use of the common areas in the remainder of the building (e.g., the lobby, conference room, orientation room, lunch room, lockers/showers, and restrooms). City's use of these areas shall not interfere with Contractor's use, and the parties shall cooperate with each other in the scheduling of the use of the conference room and orientation room.

**3.19 Source-Separated Recyclables-Composition Survey.** Contractor shall conduct, or assist City in the conduct of, a survey of the composition of Source-Separated Recyclable Materials delivered to the Station by the Designated Hauler of City and of Mountain View. The purpose of the survey is to determine the relative amounts of various types and grades of Source-Separated Recyclable Materials delivered from each jurisdiction for purposes of the MOU. Surveys will be conducted no more frequently than once every six (6) months and will require up to \_\_\_\_\_ ( ) worker hours of sorting and tabulation. The procedure for the survey and the content of the report to be furnished within \_\_\_\_\_ ( ) weeks after completion of the survey are described in Exhibit \_\_\_\_.

**3.20 Cost Allocation Reports.** No later than thirty (30) days after the end of each fiscal year, i.e., by July 30 of each year, Contractor shall deliver to City a report showing the distribution of all payments received from the City among the following operations:

- transfer
- materials recovery
- yard trimmings processing
- curbside recyclables
- public buyback/drop off

Contractor shall set forth the cost allocation method it used to calculate the distribution. In addition, if requested by City, it shall submit up to two (2) additional revenue distributions using alternative allocation assumptions provided by the City.

**ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE  
FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET**

**4.01     Transportation.** Contractor shall transport and deliver to the Disposal Facility all Municipal Solid Waste that is not recycled. Contractor shall transport and deliver (or arrange for the transportation and delivery of) all Recyclable Materials, including Source-Separated Recyclable Materials and Recyclable Materials recovered from MSW, to a purchaser, a permitted recycling facility, or a person who will use the materials in a process or product and will not dispose of them. Contractor shall arrange for the Transportation and delivery of all Source-Separated Yard Trimmings to a permitted off-site composting facility or biomass-fuel electrical generating station. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste, Designated Waste and other materials which are encountered at the Station and which cannot be accepted at the Disposal Facility to an appropriately permitted disposal facility. Routes within City over which vehicles travel to effect this transport and delivery shall be selected to minimize inconvenience and disturbance to the public and shall be subject to the approval of City.

Contractor shall use due care to prevent Municipal Solid Waste or Recyclable Materials from being spilled or scattered during transport. All vehicles hauling materials from the Station shall be enclosed or have other appropriate covering as approved by City. If any Municipal Solid Waste or Recyclable Materials are spilled within the City, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No Recyclable Materials which have been delivered to the Station already separated and no materials which have been processed at the Station for Recycling may be disposed of (1) on land, or (2) with the sole exception of wood, through Transformation, without the prior written consent of City.

No materials of any kind may be disposed of on land at any location other than the Disposal Facility. No materials of any kind may be disposed of in water or in the atmosphere. Notwithstanding the foregoing, Contractor may, and shall, dispose (or arrange for the disposal) of Hazardous Waste which it identifies among the materials

delivered to the Station at permitted hazardous waste disposal facilities, subject to City reimbursement under Section 5.02.D.

Transfer Vehicles shall not depart the Station to deliver Municipal Solid Waste to Kirby Canyon between the hours of 4:30 p.m. and 5:30 p.m., Monday through Friday, except California State holidays. Transfer Vehicles shall not depart Kirby Canyon to return to the Station between the hours of 7:15 a.m. and 8:30 a.m., Monday through Friday, except California State holidays.

**4.02      Parking and Maintenance of Transfer Vehicles.** Contractor may park empty Transfer Vehicles in the fenced and paved operational area of the Station Site, which does not include the office parking lot. Transfer Vehicles may not be fueled, maintained or repaired in this area. Contractor must make arrangements, at its sole costs and expense, for an off site location at which fueling, maintenance and repair of Transfer Vehicles will be carried out. Transfer Vehicles containing Municipal Solid Waste must be parked on the tipping floor, so that liquids from the Municipal Solid Waste drain only to the tipping floor.

## **ARTICLE 5. COMPENSATION TO CONTRACTOR**

**5.01     General.** The payments provided for in Sections 5.02 through 5.05 and the share of revenues provided in Section 5.06 are the full, entire and complete compensation due to Contractor for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Station in accordance with Article 3, and the transportation of materials in accordance with Article 4. The compensation provided for in this Article includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate to perform the services in accordance with this Agreement. Notwithstanding the foregoing, if a possessory interest tax is assessed against Contractor pursuant to California Revenue and Taxation Code Section 107, Contractor shall pay such tax but City shall reimburse Contractor for the amount of tax paid upon receipt of evidence of the tax assessment and payment. Contractor shall cooperate with City, if requested, in City's effort to seek a reduction in or removal of such tax, including filing a protest of the tax. Expenses incurred by Contractor in so doing will also be reimbursed by City.

### **5.02     Basic Annual Payment.**

A. Contractor will be paid a Basic Annual Payment for receipt, processing and transfer of up to two hundred eighty thousand (280,000) Tons per year of MSW and Yard Trimmings delivered to the Station by the Participating Agencies, their Designated Haulers, and the Designated Haulers of communities in the Extended Service Area. The Basic Annual Payment in effect as of the Effective Date is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

B. The Basic Annual Payment set forth in Section 5.02.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics ("the Index"). The Index level as of \_\_\_\_\_, 2006 (i.e., \_\_\_\_\_) shall be the Base Index and shall be

compared with the Index as of \_\_\_\_\_ in subsequent years. For example, the Basic Annual Payment shall be adjusted on July 1, 2007 by multiplying \_\_\_\_\_ Dollars (\$\_\_\_\_\_) by one (1) plus the percentage change from the Base Index to the Index level as of \_\_\_\_\_ 2007. The parties recognize that the amount of the monthly installment payment will change each August to reflect the change to the Basic Annual Payment taking effect each July.

C. The Basic Annual Payment will be paid as provided in Section 6.01.

**5.03      Tipping Fee for Excess Tonnage.**

A. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area during the period January 1, 2008 through June 30, 2008 exceeds One Hundred Forty Thousand (140,000) Tons, the Contractor shall be paid a Tipping Fee for each Ton in excess of 140,000 Tons.

B. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area exceeds Two Hundred Eighty Thousand (280,000) Tons in any fiscal year commencing July 1, 2008, Contractor shall be paid a Tipping Fee for each Ton in excess of 280,000 Tons as provided in Section 5.03.B.

C. The Tipping Fees earned for Excess Tonnage in effect as of the Effective Date shall be:

For MSW:                      \$\_\_\_\_\_ per Ton

For Yard Trimmings:        \$\_\_\_\_\_ per Ton.

D. The Tipping Fees set forth in Section 5.03.B shall be adjusted as of July 1, 2007 and as of each July 1 thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.



E. Tipping Fees earned, if any, will be paid as provided in Section 6.02.

**5.04 Gate Fees for Publicly Hauled Waste.**

A. Contractor will be paid a Gate Fee for receipt, processing and transfer of Publicly Hauled Waste delivered to the Station whether from within the Primary Service Area or, if allowed by City, from within the Extended Service Area. This Gate Fee will be, as of the Effective Date, Five Dollars and Fifty Cents (\$5.50) per Cubic Yard.

B. The Gate Fee for Publicly Hauled Waste set forth in Section 5.04.A shall be adjusted as of January 1, 2007 and as of July 1 annually thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

C. Gate Fees for Publicly Hauled Waste will be paid as provide in Section 6.03.

**5.05 Reimbursement of Certain Costs.**

A. The Basic Annual Payment provided in Section 5.02 is intended to cover all costs of operating the Station other than those incurred by Contractor

1. to arrange for transport and legal disposal of Hazardous Wastes and Sharps identified through the Hazardous Waste Exclusion Program or during subsequent processing at the Station, radioactive wastes detected at the scales, and Sharps delivered to the Drop Off Facility; and

2. to purchase spare parts for stationery equipment listed on Exhibit H-1.

Contractor will not receive reimbursement for costs of disposal of compressor oils, switches containing mercury, or CFCs removed from appliances delivered to the Station or for Hazardous Wastes generated by the Contractor's own operations, all of which are included in the Basic Annual Payment.

B. Reimbursement of actual and reasonable costs incurred will be made as provided in Section 6.04.

**5.06 Contractor's Share of Recycling Revenues.** As an incentive to Contractor to maximize both the quantity and quality of materials recovered and successfully marketed for recycling, Contractor will be entitled to retain a percentage of gross revenues from the sale of

- (i) Materials recovered from MSW;
- (ii) Source Separated Recyclable Materials delivered by the Participating Agencies' Designated Haulers;
- (iii) Source Separated Yard Trimmings delivered by the Participating Agencies' Designated Haulers;
- (iv) Materials delivered to the Drop-Off Center.

The percentage of gross revenue to be retained by Contractor is dependent on the level of recovery achieved, as set forth on Exhibit \_\_\_\_.

*[Price Guarantee?]*

The method by which Contractor will share revenues as provided above is specified in Section 6.05.

## **ARTICLE 6. PAYMENT AND REVENUE SHARING PROCEDURES**

**6.01     Basic Annual Payment.** The Basic Annual Payment provided for in Section 5.02 shall be paid in arrears in 12 equal monthly installments, with the first payment due in February 2008. City will pay each installment by the fifteenth (15th) day of the month immediately following the month in which that installment of the Basic Annual Payment was earned.

**6.02     Tipping Fee for Excess Tonnage.** If Contractor earns a Tipping Fee provided for in Section 5.03 for processing more than 280,000 Tons of MSW and Yard Trimmings during a fiscal year, City will pay the amount due by the fifteenth (15th) day of the month immediately following the month in which the Tipping Fee was earned.

**6.03     Publicly Hauled Waste.** Contractor will pay to City (by deposit to a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month, the amount of all public use fees collected, billed or billable during the immediately preceding month from persons delivering Publicly Hauled Waste, less the amount of the Gate Fee for processing Publicly Hauled Waste then in effect under Section 5.04. If Contractor extends credit to Persons delivering Publicly Hauled Waste, it does so at its risk and is solely responsible for inability to collect sums due.

**6.04     Cost Reimbursements.** If Contractor incurs costs which are reimbursable under Section 5.05, it shall submit an invoice by the fifteenth (15th) day of the following month with information sufficient to substantiate the amount and purpose of each expense. City will pay the cost reimbursements due by the fifteenth (15th) day of the month immediately following its receipt of a timely and complete invoice.

**6.05     Revenues Received from Sale of Recyclable Materials.**

A. Contractor shall remit to City the applicable percentage of the gross sales price of all materials delivered to the Station which are not disposed of at the Disposal Facility, including, but not limited to (1) materials recovered by Contractor from Municipal Solid Waste, (2) Source-Separated Recyclable Materials delivered by Designated Haulers, and (3) Recyclable Materials delivered to the dropoff center.

B. Contractor shall pay to City (by deposit into a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month the percentage of the gross sales price earned during the preceding month from the sale of material described in Section 6.05.A to which City is entitled under Section 5.06 and Exhibit \_\_\_\_\_. The amount to be paid to City will be all revenues earned that Contractor is not entitled to retain under Section 5.06. ***[How to determine percentage to be used at outset?]***

C. On or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing at least the following information:

1. the amount (in Tons) of Source-Separated Recyclable Materials delivered to the Station during each day of the preceding month by each of the Participating Agencies and/or their Designated Haulers;

2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable Materials delivered to the Buyback/Dropoff Center during each day of the preceding month;

3. the amount (in Tons) of Recyclable Materials recovered by Contractor from Municipal Solid Waste delivered to the Tipping Floor;

4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the total sales price;

5. a daily accounting showing the following information for each sales transaction:

- date of sale;
- type of material sold and grade, if applicable;
- quantity of material sold;
- unit price;
- total revenue due from sale;
- name and address of purchaser; and
- a copy of the sales invoice, sales contract or other document evidencing transfer of title.

Contractor shall utilize the appropriate reporting forms in Exhibit \_\_\_\_.

D. If Contractor and purchasers adjust the sales price for materials after the initial sales transaction to account for agreed-upon differences in quantities (due to moisture loss, for example) or quality (due to grade determinations), Contractor shall notify City within \_\_\_\_\_ (\_\_\_\_\_) days after the close of the month in which the sale was initially made and an adjustment shall be made (up or down) in the amount of revenue due to City to reflect the ultimate sales price. This adjustment procedure does not allow Contractor to reduce amounts owed City due to purchaser default; credit sales are at the sole risk of Contractor.

E. The parties shall, during July of each year, perform an annual reconciliation of the allocation of recycling revenues by calculating the annual recycling level for the preceding fiscal year per Exhibit \_\_\_\_, determining the corresponding revenue allocations per Exhibit \_\_\_\_, and applying those percentages to the total amount of revenue earned during that fiscal year. (In July 2008, the reconciliation will cover the previous six months.) The resulting dollar amounts will be compared with the sum of the monthly payments to the City and any adjustment (which is not expected to be large) made by means of a separate payment from Contractor to the City or from the City to Contractor made within thirty (30) days after the amount of the adjustment is determined.

F. City may request additional information regarding a report within thirty (30) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report and payment, or within thirty (30) days after receipt of the additional information if such information is requested, of any dispute as to the accuracy of the report and the amount of the payment.

G. City will consider adopting reporting systems and procedures which will protect the confidentiality of parties to brokered transactions, if Contractor advises that doing so would enhance the marketability or market price of Recyclable

Materials. City has no obligation to adopt or implement any such system and its decision on this matter will be in its sole discretion.

**6.06      Host Fee; Payment Procedure.** In order to assist City in separately collecting the Host Fee from the other Participating Agencies, on or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing: (1) the amount (in Tons or yards, whichever is applicable) of Municipal Solid Waste delivered to the Station on each day of the preceding month; (2) the total amount of Municipal Solid Waste (in Tons or yards) delivered to the Station during the preceding month; and (3) a breakdown showing how many Tons or yards of Municipal Solid Waste were received from (i) each of the Participating Agencies, (ii) from cities that are not Participating Agencies, if any, and (iii) from all other sources during the preceding month.

City may request additional information regarding a report within thirty (30) days from its receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report, or within thirty (30) days after receipt of the additional information, if such information was requested, of any dispute as to the accuracy of the report.

## **ARTICLE 7. INDEMNITY, INSURANCE, BOND**

**7.01     Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

### **7.02     Insurance.**

**A.     Types and Amounts of Coverage.** Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the following types and amounts of insurance:

#### **1.     Workers' Compensation and Employer's Liability.**

Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per accident or disease. Provided, however, that Contractor shall not be obligated to carry workers' compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) provides a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and

(iii) provides a certified copy of the permit renewing authorization for such self-insurance at least ten (10) days before expiration of the old permit.

2. Comprehensive General Liability (and Automobile Liability).

Contractor shall maintain Comprehensive General Liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this Subsection shall include:

- (a) Premises Operations, including use of owned and non-owned equipment;
- (b) Independent Contractor's Protective;
- (c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another person;
- (d) Personal Injury Liability with Employment Exclusion deleted;
- (e) Broad Form Blanket Contractual, including Contractor's Obligation under Section 7.01, with no exclusions for bodily injury, personal injury or property damage;
- (f) Owned, Non-Owned, and Hired Motor Vehicles;
- (g) Broad Form Property Damage, including Completed Operations.

The Comprehensive General Liability insurance required by Section 7.02.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG 0001). If coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or



termination. Any excess or umbrella policies shall be on a "following form" basis. The policy limit and the self-insured retention shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

3. Hazardous Materials Storage and Transport. Contractor shall maintain insurance coverage of not less than Five Million Dollars (\$5,000,000) per location for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any hazardous materials or wastes during storage at the Station and transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement. This insurance shall also cover costs associated with remediation of the released hazardous materials. The policy limit for such coverage shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

4. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering (a) the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than Fifty Thousand Dollars (\$50,000), and (b) Recyclable Materials at the Station Site or in transit to a purchaser, with no deductible or self-insured retention. Regardless of the foregoing, for the tractors and trailers used in providing services under this Agreement Contractor shall be allowed to self-insure for physical damage provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses. Contractor must also carry comprehensive physical damage insurance with a deductible of not more than One Hundred Thousand Dollars (\$100,000), applicable to a casualty occurring while such vehicles are parked.

5. Pollution Liability. Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than One Million

Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and remediation as a result of pollution conditions arising out of its operations under this Agreement.

The insurance policies required by this Section 7.02 shall be issued by an insurance company or companies admitted to do business in the State of California, and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better. However, if Contractor demonstrates that such insurance is unavailable on commercially reasonable terms from insurers with such ratings, it may request approval of insurers with a rating of not less than A+ VI in the then most recent edition of Best's Insurance Reports and City shall not unreasonably refuse such a request. Under no circumstances shall the insurer be rated less than "A+."

**B. Required Endorsements.**

1. The Worker's Compensation and Employers' Liability policy shall contain endorsements in substantially the following form:

"Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk and Insurance Manager

CITY OF SUNNYVALE  
P.O. Box 3707  
456 West Olive Avenue  
Sunnyvale, CA 94086

"Insurer waives all right of subrogation against City and its officers and employees arising from work performed for City."

2. The Comprehensive General Liability, Hazardous Materials and Pollution Liability policies shall contain endorsements in substantially the following form:

(a) "Thirty (30) days' prior written notice shall be given to the City of Sunnyvale in the event of cancellation or non-renewal of this policy, reduction in coverage,

or reduction in aggregate limits due to payment of claims. Such notice shall be sent to:

Risk and Insurance Manager  
CITY OF SUNNYVALE  
P.O. Box 3707  
456 West Olive Avenue  
Sunnyvale, CA 94086

- (b) "The City of Sunnyvale, its officers, employees, and agents, the City of Palo Alto, and the City of Mountain View are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Sunnyvale, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the City of Sunnyvale, Palo Alto and Mountain View as an insured shall not affect the Participating Agencies' rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Participating Agencies in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. The physical damage policy shall contain the following

endorsements:

- (a) Notice of cancellation, reduction in coverage or non-renewal, as provided in Subsection B.2(a).
- (b) Cross liability endorsement, as provided in Subsection B.2(d).
- (c) Waiver of subrogation against City.
- (d) Proceeds to be paid to City, to the extent of loss of or damage to Recyclable Materials.

**C. Delivery of Proof of Coverage.** No later than thirty (30) days before the commencement of operations (i.e., on or before November 30, 2007), Contractor shall furnish City certificates of each policy of insurance on a Standard ACORD form substantiating that each of the coverages required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term.

**D. Other Insurance Requirements**

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 7.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 7.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 7.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

3. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

**7.03      Faithful Performance Bond.** Not later than ten (10) days before the Effective Date (i.e., on or before \_\_\_\_\_, 2007), Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be [Two Million Dollars (\$2,000,000).] The form of the bond shall be as set out in Exhibit \_\_\_\_\_. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twenty-four (24) months, or until \_\_\_\_\_, 2009, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Exhibit \_\_\_\_-1, executed by the surety.

The principal amount of the bond shall be increased in 2011 by the same percentage that the Basic Annual Payment provided in Section 5.02 has been cumulatively increased, rounded to the nearest Twenty Five Thousand Dollars (\$25,000).

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

**7.04      Alternative Security.** City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 7.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

**7.05      Hazardous Waste Indemnification.** Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the City against

all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Wastes at any place where Contractor stores or disposes of Hazardous Wastes pursuant to this Agreement except to the extent that Contractor can demonstrate that such claim arises solely from Hazardous Wastes collected and deposited by City employees acting within the ordinary course and scope of their employment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from liability.

**7.06      Integrated Waste Management Act Indemnification.** Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA; b) caused or contributed to by the Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

## **ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**8.01      Corporate Status.** Contractor is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_, and is qualified to do business in the State of California. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

**8.02      Corporate Authorization.** Contractor has the authority to enter into and perform its obligations under this Agreement. [The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its Articles of Incorporation, its Bylaws or otherwise to authorize the execution of this Agreement.] The person signing this Agreement on behalf of Contractor has authority to do so.

**8.03      Statements and Information in Proposal.** The Proposal submitted to City by Contractor and information submitted to City supplementary thereto, on which City has relied in entering into this Agreement does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

**8.04      No Conflict with Applicable Law or Other Documents.** Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

**8.05      No Litigation.** There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way,

would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

**8.06      Financial Condition.** Contractor has made available to City information on its financial condition [and that of \_\_\_\_\_]. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

**8.07      Expertise.** Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.